

In the Matter of Merchant Mariner's Document No. Z-312235-D1 and  
all other Licenses, Certificates and Documents  
Issued to: WILLIAM LEE WARREN

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

810

WILLIAM LEE WARREN

This appeal has been taken in accordance with Title 41 United States Code 239(g) and Title 41 Code of Federal Regulations Sec. 137.11-1.

By order dated 3 January 1955, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-312235-D1 issued to William Lee Warren upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman on board the American SS CONSTITUTION under authority of the document above described, on or about 19 December 1954, while said vessel was in the port of New York, he wrongfully had in his possession certain narcotics; to wit, approximately a half marijuana cigarette.

Appellant was served with the charge and specification on 22 December 1954. At this time, Appellant was advised of his right to be represented by counsel.

At the beginning of the hearing on 28 December 1954, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. The Examiner advised Appellant that his document would be revoked, in accordance with 46 CFR 137.03-1, if the alleged narcotics offense should be proved by the necessary evidence. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Customs Port Patrol Officer who found the marijuana cigarette on Appellant's person as well as a copy of the U. S. Customs Laboratory Report setting forth the results of the analysis of the cigarette. Later, the Investigating Officer produced a witness in rebuttal.

In defense, Appellant offered in evidence his own sworn testimony, the testimony of several other members of the crew of the CONSTITUTION and documentary exhibits. Appellant testified that he was "framed"; that he was the union Political Action Committee Director on the ship; and that he thinks a political opponent put the marijuana cigarette in Appellant's pocket. Appellant also stated that he has never smoked marijuana or had anything to do with it although he has seen it purchased and smoked by other seamen while they were ashore.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-312235-D1 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the charge and specification have not been proved beyond a reasonable doubt; Appellant did not have the benefit of counsel at the hearing; and the case should be remanded to the Examiner in order to give Appellant an opportunity to present new evidence concerning the entire incident.

In a supplemental brief submitted in May 1955, the request for a remand to present new evidence is expanded upon. It is contended that additional testimony concerning Appellant's union activities on the CONSTITUTION would lead the Examiner to the conclusion that the partially smoked marijuana cigarette was "planted" in a pocket of Appellant's coat by a supporter of the insurgent group whose members had recently been defeated in their attempt to become elected officers of the National Maritime Union. Counsel states that Appellant was not able to present more fully the circumstances surrounding his alleged wrongful possession of marijuana and the conditions leading to his "framing" because he was confused as a result of pressure by the Investigating Officer and unfamiliarity with the procedure at the hearing. In conclusion, it is respectfully requested that the case be remanded for a rehearing not inconsistent with this appeal.

APPEARANCES: Irving Zwerling, Esquire, of New York City, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

### FINDINGS OF FACT

On 18 and 19 December 1954, Appellant was serving as a fireman on board the American SS CONSTITUTION and acting under authority of his Merchant Mariner's Document No. Z-312235-D1 while the ship was docked at Pier 84, North River, New York.

Appellant was the Director of the Political Action Committee of the National Maritime Union on the CONSTITUTION. In this capacity, he was the leader on the ship of the incumbent faction of the union which was opposed by other National Maritime Union members on the ship. Appellant supported various union policies with which the union minority did not agree. As a result, Appellant had a number of political opponents among the crew members on the CONSTITUTION.

At approximately 2300 on 18 December 1954, Appellant returned to the ship to stand his watch from 0000 to 0800 on 19 December. While on watch, Appellant left his suit on the top of his bunk in the forecastle which he shared with three other members of the crew. The forecastle was equipped with a full length locker, for each occupant, which could be locked with the seaman's personal lock. The door of the forecastle could be unlocked with skeleton type keys which had been issued to hundreds of other members of the crew.

After the completion of his watch, Appellant went ashore with another member of the crew at about 0900. Appellant was leaving Pier 84 when he was stopped and searched by a Port Patrol Officer and another Customs employee assigned to duty in this area. When the Port Patrol Officer asked Appellant if he had "anything" Appellant raised his arms to facilitate the search. The Port Patrol Officer found approximately one-half of a partially smoked marijuana cigarette in the left inside breast pocket of Appellant's suit coat. Appellant expressed surprise at this discovery, denied any knowledge as to how the cigarette got in his pocket and said that somebody must have put it there due to Appellant's union activities. Appellant and the other seaman were thoroughly searched but no additional evidence of narcotics was found. A search of Appellant's belongings on the ship did not disclose any trace of marijuana or other narcotics.

It was determined by subsequent analysis at a U. S. Customs Laboratory that the net weight of the partially smoked marijuana cigarette was eight grains (0.018 ounces). The fine of 45 /CENT/, which was assessed against the Master of the CONSTITUTION for failure to manifest the marijuana, was paid by Appellant.

There is no evidence in the record that prior disciplinary

action has been taken against Appellant since he has been going to sea. Appellant has been sailing on American merchant vessels since 1942.

#### OPINION

The request that the record be remanded for the presentation of additional evidence is denied because Appellant's supplemental brief indicates that the so-called new evidence to be presented would not be new matter but merely cumulative evidence pertaining to Appellant's union activities. Appellant testified extensively concerning this factor and it was given thorough consideration by the Examiner in arriving at his conclusion that Appellant was guilty of the alleged offense. As indicated above, Appellant was warned by the Examiner that his document would be revoked if the alleged offense was found proved; and Appellant was given full opportunity to retain counsel if he considered this necessary in order to more fully develop any phase of his defense. Appellant was first advised of his right to counsel on 22 December 1954 and the Examiner's decision was not mailed to Appellant until 13 January 1955. The claim of new evidence was raised by counsel in his letter of 19 January 1955. In essence, it does not appear that the evidence of internal friction within the National Maritime Union is newly discovered evidence or that there is good reason why such evidence was not presented at the hearing before the Examiner. In addition, it could only lend indirect support to Appellant's claim of innocence since Appellant still has not specified any seaman or seamen who might possibly have "planted" the marijuana in Appellant's coat pocket as an outgrowth of this friction within the union.

In favor of Appellant, the Examiner considered such other factors as Appellant's denial of knowledge of the presence of the marijuana cigarette, his apparent astonishment when the Port Patrol Officer found the cigarette, the easy access to Appellant's forecastle by the use of a skeleton key, and the fact that Appellant left his suit on his bunk in his forecastle. On the other hand, it is reasonable to assume that Appellant would have locked his suit in his locker if there was as much animosity towards him as is now claimed in this request to remand the case.

A prima facie case was made out against Appellant, in accordance with 46 CFR 137.21-10, by the rebuttable presumption of fact of conscious and knowing possession arising from the proof of physical possession of the marijuana cigarette. Yee Hem v. U. S. (1925), 268 U. S. 178, 185; Commandant's Appeal Decision No. 670. This presumption can only be rebutted by evidence which must, if believed by the trier of facts, establish facts from which reasonable minds can draw but one inference Wolfgang v. Burrows

(C.A.D.C., 1950), 181 F2d 630. In other words, the countervailing evidence must constitute substantial evidence. But after considering all the factors brought out by the evidence in this case, the Examiner, as the trier of the facts who was in the best position to judge the credibility of the witnesses, specifically rejected Appellant's denial (that he had knowledge of the presence of the marijuana cigarette) which would have constituted substantial evidence if it had been accepted by the Examiner. Under circumstances where a defendant's knowledge of the presence of the narcotic in his possession is material, the weight to be attached to the denial of a defendant is for the jury to determine. Gee Woe v. U.S. (C.C.A. 5, 1918), 250 Fed. 428 cert. den. 248 U.S. 562. Similarly, the weight to be given Appellant's denial in this administrative action is for the Examiner to determine. Commandant's Appeal Decision No. 712. Consequently, the prima facie case made out by the proof of physical possession of the marijuana was not overcome by Appellant. In this connection, it is noted that the quantum of proof required in these remedial proceedings is substantial evidence rather than proof beyond a reasonable doubt as contended on appeal.

Since the presence of narcotics on board ships is considered to be such a serious threat to lives and property, the order of revocation must be sustained despite Appellant's prior clear record and the personal hardship to him.

#### ORDER

The order of the Examiner dated at New York, New York, on 3 January 1955 is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 25th day of May, 1955.